

## § 550.713

(b) If an employee again becomes entitled to severance pay, the agency in which entitlement arises shall recompute the severance pay allowance on the basis of all creditable service and current age and deduct from the number of weeks it would take to exhaust the allowance the number of weeks for which severance pay previously was received.

### § 550.713 Records.

Agencies shall maintain records, by fiscal year, of the number of employees who receive severance pay and the total amount of severance pay paid. The Office of Personnel Management may require agencies to report such information to the Office.

[55 FR 6593, Feb. 26, 1990, as amended at 64 FR 69178, Dec. 10, 1999]

EFFECTIVE DATE NOTE: At 64 FR 69178, Dec. 10, 1999, § 550.713 was amended by removing its second sentence, effective Jan. 10, 2000. For the convenience of the user, the superseded text follows.

### § 550.713 Records.

\* \* \*When entitlement to severance pay arises as the result of contracting a Federal function to a private contractor, the affected agency also shall record the number of separated employees who go to work for the contractor within 90 days after the effective date of the contract. \* \* \*

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### § 550.714 Panama Canal Commission employees.

(a) Notwithstanding any other provisions of this subpart, an employee separated from employment with the Panama Canal Commission as a result of the implementation of any provision of the Panama Canal Treaty of 1977 and related agreements shall not be entitled to severance pay if he or she—

(1) Receives a written offer of reasonably comparable employment when such offer is made before separation from Commission employment;

(2) Accepts reasonably comparable employment within 30 days after separation from Commission employment; or

(3) Was hired by the Commission on or after December 18, 1997.

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(b) The term *reasonably comparable employment* means a position that meets all the following conditions:

(1) The position is with the Panamanian public entity that assumes the functions of managing, operating, and maintaining the Panama Canal as a result of the Panama Canal Treaty of 1977;

(2) The rate of basic pay of the position is not more than 10 percent below the employee's rate of basic pay as a Panama Canal Commission employee;

(3) The position is within the employee's commuting area;

(4) The position carries no fixed time limitation as to length of appointment; and

(5) The work schedule (that is, part-time or full-time) of the position is the same as that of the position held by the employee at the Panama Canal Commission.

(c) A Panama Canal Commission employee who resigns prior to receiving an official written notice that he or she will not be offered reasonably comparable employment shall be considered to be voluntarily separated. Section 550.706(a) shall be applied, as appropriate, to any employee who resigns after receiving such notice.

(d) Except as otherwise provided by paragraphs (a) through (c) of this section, the provisions of this subpart remain applicable to Panama Canal Commission employees.

[62 FR 49127, Sept. 19, 1997]

## Subpart H—Back Pay

AUTHORITY: 5 U.S.C. 5596(c); Pub. L. 100–202, 101 Stat. 1329.

### § 550.801 Applicability.

(a) This subpart contains regulations of the Office of Personnel Management to carry out section 5596 of title 5, United States Code, which authorizes the payment of back pay, interest, and reasonable attorney fees for the purpose of making an employee financially whole (to the extent possible) when, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance), the employee is found by an appropriate

authority to have been affected by an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due to the employee. This subpart should be read together with this section of law.

(b) This subpart does not apply to any reclassification action.

[46 FR 58275, Dec. 1, 1981, as amended at 53 FR 18072, May 20, 1988]

#### § 550.802 Coverage.

(a) Except as provided in paragraph (b) of this section, this subpart applies to employees, as defined in § 550.803 of this subpart.

(b) This subpart does not apply to—

(1) Employees of the government of the District of Columbia; and

(2) Employees of the Tennessee Valley Authority.

[46 FR 58275, Dec. 1, 1981]

#### § 550.803 Definitions.

In this subpart:

*Agency* has the meaning given that term in section 5596(a) of title 5, United States Code.

*Appropriate authority* means an entity having authority in the case at hand to correct or direct the correction of an unjustified or unwarranted personnel action, including (a) a court, (b) the Comptroller General of the United States, (c) the Office of Personnel Management, (d) the Merit Systems Protection Board, (e) the Equal Employment Opportunity Commission, (f) the Federal Labor Relations Authority and its General Counsel, (g) the Foreign Service Labor Relations Board, (h) the Foreign Service Grievance Board, (i) an arbitrator in a binding arbitration case, and (j) the head of the employing agency or another official of the employing agency to whom such authority is delegated.

*Collective bargaining agreement* has the meaning given that term in section 7103(a)(8) of title 5, United States Code, and (with respect to members of the Foreign Service) in section 1002 of the Foreign Service Act of 1980 (22 U.S.C. 4102(4)).

*Employee* means an employee of an agency. When the term *employee* is used

to describe an individual who is making a back pay claim, it also may mean a former employee.

*Grievance* has the meaning given that term in section 7103(a)(9) of title 5, United States Code, and (with respect to members of the Foreign Service) in section 1101 of the Foreign Service Act of 1980 (22 U.S.C. 4131). Such a grievance includes a grievance processed under an agency administrative grievance system, if applicable.

*Pay, allowances, and differentials* means pay, leave, and other monetary employment benefits to which an employee is entitled by statute or regulation and which are payable by the employing agency to an employee during periods of Federal employment. Agency and employee contributions to a retirement investment fund, such as the Thrift Savings Plan, are not covered. Monetary benefits payable to separated or retired employees based upon a separation from service, such as retirement benefits, severance payments, and lump-sum payments for annual leave, are not covered.

*Unfair labor practice* means an unfair labor practice described in section 7116 of title 5, United States Code, and (with respect to members of the Foreign Service) in section 1015 of the Foreign Service Act of 1980 (22 U.S.C. 4115).

*Unjustified or unwarranted personnel action* means an act of commission or an act of omission (i.e., failure to take an action or confer a benefit) that an appropriate authority subsequently determines, on the basis of substantive or procedural defects, to have been unjustified or unwarranted under applicable law, Executive order, rule, regulation, or mandatory personnel policy established by an agency or through a collective bargaining agreement. Such actions include personnel actions and pay actions (alone or in combination).

[46 FR 58275, Dec. 1, 1981, as amended at 60 FR 47040, Sept. 11, 1995; 64 FR 69178, Dec. 10, 1999]

EFFECTIVE DATE NOTE: At 64 FR 69178, § 550.803 was amended by revising the definitions of “employee” and “pay, allowances, and differentials”, effective Jan. 10, 2000. For the convenience of the user, the superseded text follows.